

Rejection Under 35 U.S.C. § 112

Claims 12-13 and 15 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. From the language of the rejection, it appears that the phrase “less than about” in these claims is of particular concern. Since similar claim language has been accepted for use by various Federal Courts, the Applicants respectfully traverse this rejection.

It should be noted that “about” is not an arbitrary term, but rather is a flexible word with a meaning similar to “approximately”. *Ex Parte Eastwood*, 163 USPQ 316, 317 (Pat. Off. Bd. App. 1968). As a matter of law, the term “about” is a clear warning that exactitude is not claimed but rather a contemplated variation. *Kolene Corp. v. Motor City Metal Treating, Inc.*, 163 USPQ 214, 220 (E. D. Mich. 1969), *aff’d*, 169 USPQ 77 (6th Cir.), *cert. denied*, 404 U.S. 886 (1971). The term “about” in the phrase “exceeding about 10% per second” was considered definite by the Court in *W. L. Gore & Assocs. V. Garlock Inc.*, 220 USPQ 303, 316 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). Thus, the term “about”, as it modifies the phrase “less than” should not be considered indefinite, and in fact, its use is supported by the Courts.

Moreover, it is well-settled that claim language is sufficiently definite if one of ordinary skill in the art would understand the scope of the claim when read in light of the specification. *In re Marosi*, 710 F.2d 799, 218 U.S.P.Q. 289 (Fed. Cir. 1983); *Morton Inst. Inc. v. Cardinal Chemical Co.*, 28 U.S.P.Q.2d 1190 (Fed. Cir. 1993); *Miles Laboratories v. Shandon Inc.*, 27 U.S.P.Q.2d 1123 (Fed. Cir. 1993), *cert. denied*, 510 U.S. 1100 (1994). The phrases “less than about 110% of the model size”, “less than about 120% of the model size”, and “less than about ten percent of the total simulation time” are explicit in the instant Application, and can be found at pg. 7, line 7; pg. 7, lines 8-9; and pg. 7, line 23; respectively.

Thus, it is clear that the Courts uphold the use of the term “about” in claim language, and that the term as used in the instant claims is supported by the text of the specification. Hence, one of ordinary skill in the art, in possession of the specification, would be readily apprised of the metes and bounds of the phrase “less than about” in the context of the present claims. Accordingly, withdrawal of the rejection of the claims 12-13 and 15 under § 112, second paragraph, is respectfully requested.

Inventorship

The present application names six joint inventors. Casas names seven authors, including T. Tetzlaff. As can be seen from the attached affidavits, T. Tetzlaff is not an inventor with respect to this Application, and therefore has not been named as such.

Rejections Under 35 U.S.C. §102

Claims 1-28 were rejected under 35 U.S.C. §102(a) and §102(b) as being anticipated by Casas. In light of the attached affidavits, the Applicants respectfully traverse this rejection. Since Casas is not properly applicable as prior art against the instant Application, the Applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. §102(a).

CONCLUSION

The Applicants respectfully submit that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone the Applicants' attorney Mark Muller at (210) 308-5677, or the undersigned, to facilitate prosecution of this Application. If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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November 27, 2002

By

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner of Patents, Washington, D.C. 20231, on this 27 day of November, 2002.

Jane Sagers
Name

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Signature